

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

July 17, 1984

Chris D. Morrison
34 Billou Street
San Rafael, CA 94901

Re: Your Request for Advice,
Our Advice No. A-84-139

Dear Mr. Morrison:

I hope my delay in responding to your letter and confirming our telephone conversation has not caused you any inconvenience. My understanding is that you are considering running for a position on the Marin Municipal Water District Board. You are the Local Area Manager of Nalco, a large chemical company. The District purchases water treatment chemicals from Nalco on a continuing basis, and you, in your position with Nalco, provide technical advice and service. You asked questions concerning the potential for conflicts of interest if you were elected to the District Board.

I have enclosed a copy of the Commission's Guide to the Conflict of Interest Provisions of the Political Reform Act. This guide explains the basic terms, requirements and prohibitions of the conflict of interest law.^{1/}

As applied to your situation, the law requires that you refrain from participating in any District Board decisions which could have a material financial effect on Nalco or which materially affect the amount of income you receive from Nalco.^{2/} This would include decisions specifically involving Nalco (e.g., decisions on the purchase of water treatment

^{1/} It does not discuss Government Code Section 1090 which is not a part of the Act. This section is discussed in Mr. Thorner's letter (attached to your request).

^{2/} A copy of the Commission regulation defining materiality is enclosed.

chemicals from Nalco and any other decisions which could have a direct impact on Nalco).

In addition, you should not participate in any District Board decisions where there is a nexus between the decision and your job responsibilities at Nalco.^{3/} See 2 Cal. Adm. Code Section 18702(b)(3)(B). For example, if part of your job involves advising customers, such as the District, on the best methods for water treatment, then you should not participate in District Board decisions concerning water treatment.

The underlying rationale for this "nexus" test is that when a connection exists between a person's job and his or her role as a public official, there is a presumption that the value of the employee's services to the employer is based at least in part on the fact that the employee is a public official. If an employee is being paid to do something similar to what he or she does as a public official, we presume that the employer is getting something of value from the situation. There is an inherent appearance of conflict as well as an actual conflict when an official is being paid to promote or represent certain positions, on the one hand, and on the other, he or she is being called on to determine public policies and positions in the same area.

From your letter and our conversation, I do not know enough about Nalco, your job, or the operations of the District, to conclude that you will or will not have conflicts of interest based on an application of the "nexus" test. It appears that there is a potential for conflicts in at least the area of water treatment. If you have further questions on this, or on any other part of this advice letter, I would be happy to discuss them with you.

Sincerely,



Diane Maura Fishburn
Counsel, Legal Division

DMF:km
Enclosures

^{3/} You indicated to me in our telephone conversation that you do presently give the District technical advice as to a representative of Nalco and that, if elected, you would no longer have any involvement in Nalco's relationship with the District.

CHRIS D. MORRISON
34 Billou Street
San Rafael, CA 94901 P C
(415) 485-1451

MAY 25 1 34 PM '84

May 22, 1984

California Fair Political Practices Assn.
1100 "K" Street
Sacramento, California

Dear Sir/Madam:

I am considering running for an elected office on the Marin Municipal Water District Board in the future. There is some question of my conflict of interest and I would appreciate your appraisal of this situation.

Enclosed is the response of the Attorney for the Water District, Mr. Thomas Thorner. In paragraph 2 he outlined my experience. I am confused and bewildered on one premise - in addition to the general conflict of interest with regards to the annual Nalco Contract:

Since the Board controls a huge watershed area - and potentially any project in these areas (i.e., logging, erosion control, etc.) affects the water quality - and subsequent cost for treating this water (i.e., Nalco Chemicals) - I am concerned that I might be thwarted from voting on anything concerning the water district's main responsibility, which is watershed.

Marin Municipal Water District is a very small client of Nalco. Nalco sales for 1983 exceeded \$659 million with profit of \$71 million. Annually, sales to MMWD from Nalco average \$60,000. I am not on commission and receive a full salary as the local area manager for Nalco.

So, to summarize - is there a definite?

- a) Conflict of Issue?
- b) Could I legally vote on any issue concerning the watershed?
- c) Are there other liabilities?
- d) Your recommendations.

Thank you in advance for your help in this matter. Should you need any other information please do not hesitate to call.

Sincerely,


Chris D. Morrison

Attachments

File No. 052

May 4, 1984

Chris Morrison
1036 Lea Drive
San Rafael, CA 94903

Dear Mr. Morrison:

Pursuant to your recent request, attached you will find letter dated May 3, 1984 from the District's attorney, Tom Thorner, in which he opines regarding a possible conflict of interest should you be elected to the District Board of Directors.

I believe this letter satisfactorily replies to your request; please address any questions you may have to me or to Attorney Thorner.

Very truly yours,

Richard W. Rogers
General Manager

RWR:ab
Enclosure



ROTH & THORNER -- ATTORNEYS AT LAW

1050 NORTHGATE DRIVE, P. O. BOX G, SAN RAFAEL, CA 94913 (415) 479-5623

May 3, 1983

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Richard Rogers
Marin Municipal Water District
220 Nellen Avenue
Corte Madera, CA 94925

Re: Conflict of Interest questions re Board
candidate Chris Morrison

Dear Dick:

You have requested an opinion as to whether the election of Chris Morrison, an employee of NALCO, to the MMWD Board of Directors would affect the District's ongoing business relationship with NALCO or create any conflict of interest problems for Mr. Morrison.

I am advised that Mr. Morrison has been an employee of NALCO for more than three years, that NALCO has been doing business with the MMWD for more than six years providing technical assistance and a polymers used in water treatment, that Mr. Morrison has regularly dealt with the District on behalf of NALCO during that time, and that NALCO has more than ten other employees.

Under Government Code §1090 and the District Conflict of Interest Policy district officers and employees may not be "financially interested" in any contract made by them in their official capacity, or by any body or board of which they are members. However "financial interest" as defined for this purpose in the Government Code and District policy specifically excludes any interest of an MMWD officer who is an employee or agent of the contracting party if he has been such an employee or agent for at least three years and the contracting party has at least ten other employees (Government Code §1091(b)(2)). Thus it would be proper for the MMWD to continue its business relationship with NALCO even if Mr. Morrison were elected to the MMWD Board.

Richard Rogers
May 3, 1984
Page 2

Mr. Morrison would, however, be disqualified from making or participating in the making of any governmental decision regarding NALCO if it is reasonably foreseeable that such decision will have a material financial effect upon NALCO. (MMWD Code §14.02.090) Generally a decision will be considered to have a material financial effect if increases or decreases NALCO's annualized gross revenues by the lesser of 1% or \$100,000, if it increases or decreases NALCO's annual net income by the lesser of 1/2% ~~or~~ \$50,000, or if it increases or decreases NALCO's current assets or liabilities by the lesser of 1/2% or \$100,000. (See MMWD Code §14.02.150(L)) Since these guidelines are not conclusive, I would advise Mr. Morrison if he becomes an MMWD Director, that his best and safest course of action would be to abstain from both participation and voting on any and all board matters concerning NALCO.

Sincerely,



Tom Thorner

TT:ks

State of California



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May 30, 1984

Chris D. Morrison
34 Billou Street
San Rafael, CA 94901


Re: A-84-139

Dear Mr. Morrison:

Your letter requesting advice under the Political Reform Act has been referred to Robert E. Leidigh, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Barbara A. Milman
General Counsel

BAM:plh